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DEPARTMENT OF COMMERCE

International Trade Administration

[A-357-820, C-357-821]

Biodiesel from Argentina: Preliminary Results of Changed Circumstances Reviews of the Antidumping and Countervailing Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that changed circumstances do not exist warranting any changes under the antidumping duty (AD) order for biodiesel from Argentina. Commerce also determines, however, that changed circumstances exist warranting a change to the cash deposit rates under the countervailing duty (CVD) order.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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SUPPLEMENTARY INFORMATION:

Background

On January 4, 2018 and April 26, 2018, Commerce published the CVD and AD orders on biodiesel from Argentina.¹ On September 21, 2018, the Government of Argentina (GOA), joined by Vicentin S.A.I.C. (Vicentin) and LDC Argentina (LDC), requested that Commerce initiate a changed circumstance review (CCR) of the AD order, and the GOA (alone) requested that Commerce initiate a CCR of the CVD order, in order to have Commerce adjust the cash deposit rates established in the AD and CVD investigations as a result of changes to Argentina's export tax regime.² On October 1, 2018, the National Biodiesel Board Fair Trade Coalition (the petitioner) filed comments requesting that Commerce deny the GOA's request to initiate CCRs.³ On October 11, 2018, the GOA, Vicentin, and LDC filed comments responding to the petitioner's October 1, 2018 comments.⁴ On October 15, 2018, the petitioner submitted information and data illustrating the improvements in the domestic industry since the imposition of the orders, and on October 23, 2018, the petitioner submitted further comments opposing initiation of the CCRs.⁵ Between September 26, 2018 and October 19, 2018, Commerce met with the GOA and the petitioner to discuss their submissions to the record.⁶ On November 13, 2018,

¹ See *Biodiesel from the Republic of Argentina and the Republic of Indonesia: Countervailing Duty Orders*, 83 FR 522 (January 4, 2018), corrected by *Biodiesel from the Republic of Argentina and the Republic of Indonesia: Countervailing Duty Orders*, 83 FR 3114 (January 23, 2018); see also *Biodiesel from Argentina and Indonesia: Antidumping Duty Orders*, 83 FR 18278 (April 26, 2018).

² See GOA's Letter, "Biodiesel from Argentina: Request for Changed Circumstances Review," dated September 21, 2018 and filed on the record of A-357-820; see also GOA's Letter, "Biodiesel from Argentina: Request for Changed Circumstances Review," dated September 21, 2018 and filed on the record of C-357-821 (collectively, Requests for CCRs).

³ See Petitioner's Letter, "Biodiesel from Argentina: Petitioner's Opposition to the Government of Argentina's Requests for Changed Circumstances Reviews," dated October 1, 2018.

⁴ See GOA's Letter, "Biodiesel from Argentina: Response to Petitioners' Opposition to the Government of Argentina's Request for Changed Circumstances Review," dated October 11, 2018.

⁵ See Petitioner's Letter, "Positive Impact of Orders from Argentina on Domestic Biodiesel Industry," dated October 15, 2018; see also Petitioner's Letter, "Biodiesel from Argentina: Petitioner's Response to Respondents' October 11, 2018 Submission," dated October 23, 2018.

⁶ See Memorandum, "AD/CVD Orders on Biodiesel from Argentina – Requests for Changes {sic} Circumstance Reviews," dated September 26, 2018; see also Memorandum, "Antidumping and

Commerce initiated CCRs of both the AD and CVD orders to assess the effects of the GOA's revisions to its export tax regime pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216.⁷

On November 19, 2018 and November 21, 2018, Commerce discussed the *Initiation of CCRs* with the petitioner and the GOA, respectively.⁸ On December 3, 2018, the petitioner submitted comments regarding the methodology it recommended Commerce apply in conducting the AD and CVD CCRs.⁹ On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.¹⁰ On February 1, 2019, Commerce issued an initial questionnaire to the GOA.¹¹ The GOA submitted its responses to Commerce's initial questionnaire on February 21, 2019.¹² On March 11, 2019, the petitioner submitted comments on the GOA's initial questionnaire responses.¹³ On March 20, 2019, the GOA responded to the petitioner's comments.¹⁴ Between April 19, 2019 and June 6, 2019, Commerce held three additional *ex parte*

Countervailing Duty Orders on Biodiesel from Argentina – Requests for Changed Circumstances Reviews: Ex Parte Meeting,” dated October 4, 2018; and Memorandum, “Antidumping and Countervailing Duty Orders on Biodiesel from Argentina – Requests for Changed Circumstances Reviews: Ex Parte Meeting,” dated October 19, 2018.

⁷ See *Biodiesel from Argentina: Initiation of Changed Circumstances Reviews of the Antidumping and Countervailing Duty Orders*, 83 FR 56300 (November 13, 2018) (*Initiation of CCRs*).

⁸ See Memorandum, “AD/CVD Orders on Biodiesel from Argentina – Requests for Changed Circumstance Reviews,” dated November 19, 2018; see also Memorandum, “AD/CVD Orders on Biodiesel from Argentina: Request for Changed Circumstance Reviews,” dated November 27, 2018.

⁹ See Petitioner's Letter, “Biodiesel from Argentina: Petitioners' Comments on the Conduct of the Changed Circumstances Reviews,” dated December 3, 2018.

¹⁰ See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Partial Shutdown of the Federal Government,” dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

¹¹ See Commerce Letter re: Initial CCR Questionnaire, dated February 1, 2019.

¹² See GOA's February 21, 2019 Initial Questionnaire Response (GOA IQR).

¹³ See Petitioner's Letter, “Biodiesel from Argentina: Petitioner's Comments on the GOA's Questionnaire Response,” dated March 11, 2019.

¹⁴ See GOA's Letter, “Biodiesel from Argentina: Changed Circumstance Reviews – The GOA's Response to the Petitioners' Comments on the GOA's Questionnaire Response,” dated March 20, 2019.

meetings with the petitioner.¹⁵ On May 16, 2019, and June 14, 2019, Commerce held additional *ex parte* meetings with the GOA.¹⁶

Scope of the Orders

The product covered by the *Orders* is biodiesel from Argentina. For a complete description of the scope of the *Orders*, see the appendix to this notice.

Alleged Changed Circumstances

During the period of investigation (POI) of the AD and CVD investigations (January 1, 2016 through December 31, 2016), an export tax of 30 percent on soybeans was in effect in Argentina.¹⁷ In the AD investigation, we concluded that the 30 percent export tax had the effect of depressing the domestic price of soybeans.¹⁸ We explained that a comparison of prices within Argentina with world prices indicated domestic prices were nearly 40 percent lower than world market prices.¹⁹ We concluded that a “particular

¹⁵ See Memorandum, “Changed Circumstances Reviews of the Antidumping and Countervailing Duty Orders on Biodiesel from Argentina: Ex Parte Meeting with the Petitioners,” dated April 19, 2019; *see also* Memorandum, “Changed Circumstances Review of the Antidumping and Countervailing Duty Orders on Biodiesel from Argentina: Ex Parte Meeting with the Petitioners,” dated May 24, 2019; and Memorandum, “Changed Circumstances Reviews of the Antidumping and Countervailing Duty Orders on Biodiesel from Argentina: Ex Parte Meeting with the National Biodiesel Board,” dated June 10, 2019.

¹⁶ See Memorandum, “AD/CVD Orders on Biodiesel from Argentina – Changed Circumstance Reviews,” dated May 24, 2019; *see also* Memorandum, “Changed Circumstances Review of the Antidumping and Countervailing Duty Orders on Biodiesel from Argentina: Ex Parte Meeting with the Government of Argentina,” dated June 14, 2019.

¹⁷ See *Biodiesel from Argentina: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part*, 82 FR 50391 (October 31, 2017) (*AD Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM) (*AD Preliminary Determination PDM*) at 23-24, unchanged in *Biodiesel from Argentina: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, In Part*, 83 FR 8837 (March 1, 2018) (*AD Final Determination*) and accompanying Issues and Decision Memorandum (IDM) (*AD Final Determination IDM*); *see also* *Biodiesel from Argentina: Preliminary Affirmative Countervailing Duty Determination and Preliminary Affirmative Critical Circumstances Determination, in Part*, 82 FR 40748 (August 28, 2017) (*CVD Preliminary Determination*), and accompanying PDM (*CVD Preliminary Determination PDM*) at 26-27, unchanged in *Biodiesel From the Republic of Argentina: Final Affirmative Countervailing Duty Determination*, 82 FR 53477 (November 16, 2017) (*CVD Final Determination*) and accompanying IDM (*CVD Final Determination IDM*).

¹⁸ See *AD Preliminary Determination PDM* at 23-24; *see also* *AD Final Determination IDM* at Comment 3.

¹⁹ See *AD Preliminary Determination PDM* at 23-24; *see also* *AD Final Determination IDM* at Comment 3.

market situation” (PMS) existed with regard to the price of soybeans as an element of the cost of production (COP) of biodiesel in Argentina.²⁰ Accordingly, we adjusted the COP reported by the respondents under investigation by substituting a market determined price for the price that the respondents actually paid for soybeans in Argentina.²¹

In the CVD investigation, we concluded that domestic prices for soybeans were below world market prices by more than \$100 per metric ton, depending on the month, as a result of the export tax on soybeans.²² We also concluded that “the effect on soybean prices paid by the respondents is not incidental to, but a direct result of, a system designed by the GOA to ensure the availability of relatively low-priced soybeans for domestic processing industries, notably the biodiesel industry.”²³ We explained that the GOA had stated “export duties are a valid development tool, since they enable many developing countries to cease being mere suppliers of raw materials,”²⁴ and that the intention of its adjustment to the export tax on soybeans was to reduce domestic soybean prices in the context of rising world market prices.²⁵ We thus concluded that the GOA entrusts or directs private parties (*i.e.*, soybean growers) to provide soybeans to processing industries, including the biodiesel industry, at less than adequate remuneration (LTAR), within the meaning of section 771(5)(B)(iii) of the Act.²⁶ Because the record also indicated the

²⁰ A so-called “cost PMS” is addressed by section 773(e) of the Act. *See AD Preliminary Determination* and accompanying PDM at 20 (unchanged in *AD Final Determination*); *see also* AD Final Determination IDM at Comment 3.

²¹ *See AD Preliminary Determination* PDM at 23-24; *see also* AD Final Determination IDM at Comment 3.

²² *See CVD Preliminary Determination* PDM at 30.

²³ *Id.* at 29.

²⁴ *Id.*; *see also* the Petition, dated March 23, 2017, at Volume I (CVD Petition) at CVD-ARG-08 (the GOA’s statements to the World Trade Organization (WTO) in “Trade Policy Review Report by the Secretariat: Argentina (Revision)” WT/TPR/S/277/Rev.1 (June 14, 2013)) (placed on the record of these segments by Memorandum, “Additional Information Concerning the Preliminary Changed Circumstances Reviews of Biodiesel,” July 1, 2019 (Additional Information Memo)).

²⁵ *See CVD Preliminary Determination* PDM at 29.

²⁶ *Id.* at 29.

subsidy was specific (section 771(5A)(D)(iii)(I) of the Act) and provided a benefit (section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(1)), we determined the subsidy was countervailable.²⁷

In its CCR requests, the GOA asserts that significant changes to its export tax regime warrant reconsideration of the cash deposit rates established in the AD and CVD final determinations.²⁸ The GOA provided information indicating that, since the POIs, changes in the export tax regime have been effectuated, which was a key element in Commerce's analysis of: (1) the PMS finding concerning the cost of soybean input prices in the AD investigation; and (2) the soybeans for LTAR program in the CVD investigation.²⁹ In particular, the GOA attached four legislative decrees effecting changes across its export tax regime, including changes to the export taxes applied to soybeans and their derivative products, including biodiesel:

- 1) Decree 1343/2016 (December 30, 2016), introducing monthly reductions of 0.5 percent to the export taxes on soybeans, soybean oil, soymeal, and soybean pellets, beginning in January 2018;³⁰
- 2) Decree 1025/2017 (December 12, 2017), raising the export tax on biodiesel from zero to 8 percent, effective January 1, 2018;³¹
- 3) Decree 468/2018 (May 24, 2018), further raising the export tax on biodiesel from 8 to 15 percent, effective July 1, 2018;³² and,
- 4) Decree 793/2018 (September 3, 2018), further reducing the export tax on soybeans, soybean oil, and soymeal to 18 percent, effective September 4, 2018.³³

Decree 793/2018, in addition to decreasing the export tax on soybeans, imposed new, temporary taxes on all products exported from Argentina, equating to an additional

²⁷ *Id.* at 29-30.

²⁸ *See* Requests for CCRs at 1-2.

²⁹ *Id.* at 2 and 4; *see also* *AD Final Determination* IDM at Comment 3 and *CVD Final Determination* IDM at Comment 1, which discussed these aspects of the final determinations.

³⁰ *See* Requests for CCRs at Attachment 1.

³¹ *See* GOA IQR at Appendix V.

³² *See* Requests for CCRs at Attachment 3.

³³ *Id.* at Attachment 2.

10.3 percent tax for exports of both soybeans and biodiesel.³⁴ Thus, as a result of the four decrees, as of September 2018, the export tax on soybeans stood at 28.3 percent (nearly identical to where it was during the POIs) and the export tax on biodiesel stood at 25.3 percent (versus 3.96 percent through May 2016 and 5.04 percent from June 2016 until June 2017, at which point it was lowered to zero).³⁵

According to the decrees, the changes to the tax rates were “necessary to continue fostering the convergence between the export tax applicable to {soybeans, soybean oil, soymeal} and that applicable to biodiesel,”³⁶ and “in order to, among other objectives, implement the monetary, exchange or foreign trade policy, to stabilize internal prices and to address public financial needs.”³⁷ The preamble of Decree 793/2018 references an underlying statutory regime, as well as the GOA’s 2018 national budget, noting concerns with ensuring “fiscal convergence, an efficient tax policy and the gradual reduction of the tax burden.”³⁸ Additionally, in response to a request from Commerce, the GOA provided its economic reform proposal, as submitted to the International Monetary Fund (IMF),³⁹ as support for its claims that the export tax revisions are “aimed at reaching a gradual convergence between the export tax applicable to soybeans, soybean oil and soymeal that are applicable to biodiesel. In addition, they served revenue-collection purposes and also

³⁴ See GOA IQR at 3-4.

³⁵ See the Petition at Exhibit CVD-ARG-05 (placed on the record of these segments by Additional Information Memo).

³⁶ See Decree 486/2018; see also Requests for CCRs at Attachment 3.

³⁷ See Decree 793/2018; see also Requests for CCRs at Attachment 2.

³⁸ See Decree 793/2018.

³⁹ See GOA IQR at Appendix III (Letter to Christine Lagarde, Managing Director, IMF, “Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding,” dated October 17, 2018 (IMF Proposal)).

pursued the stabilization of internal prices, in light of a dire financial situation during 2018 and the steep devaluation of the national currency.”⁴⁰

Legal Framework

Pursuant to section 751(b)(1) of the Act, and 19 CFR 351.216(d), Commerce will conduct a CCR of an AD or CVD order upon receipt of a request from an interested party which demonstrates changed circumstances sufficient to warrant such a review. Section 751(b)(4) of the Act also provides that Commerce may not conduct a CCR of an investigation determination within 24 months of the date of the investigation determination in the absence of “good cause.” Section 351.216 of Commerce’s regulations, as well as 19 CFR 351.221, provide rules governing the conduct of CCRs.

Neither the statute nor the regulation provide a definition of “changed circumstances” nor explain what aspects of a determination may be reconsidered in light of such changed circumstances. In practice, Commerce has conducted CCRs to address a wide variety of issues, which have resulted in various determinations, including changes to cash deposit rates.⁴¹ Where Commerce determines to conduct a CCR within 24 months of an investigation final determination, the purpose is not to reconsider the validity of the determinations made in the AD or CVD investigations, which were based on the circumstances in existence during the POIs. Rather, the purpose of the CCRs is to consider whether circumstances have changed since the end of the POIs such that the cash deposit

⁴⁰ *Id.* at 1.

⁴¹ See, e.g., *Aluminum Extrusions from the People’s Republic of China: Final Results of Expedited Changed Circumstances Review*, 83 FR 45609 (September 10, 2018) (finding sufficient information of changed circumstances to recalculate certain cash deposit rates); *Certain Steel Nails From Malaysia: Final Results of Antidumping Duty Changed Circumstances Review*, 82 FR 34476 (July 25, 2017) (finding sufficient information of changed circumstances to collapse certain entities and to utilize the correct cash deposit rate); and *Final Results of Changed Circumstances Administrative Reviews; Pure Magnesium and Alloy Magnesium From Canada*, 57 FR 54047 (November 16, 1992) (finding sufficient information to determine changed circumstances to the major subsidy program at issue in the underlying investigation).

rates established by the final determinations (and put into effect by the *Orders*) are no longer the best estimates of prospective dumping and subsidization and therefore are no longer appropriate for purposes of collecting deposits.

AD Analysis

Commerce preliminarily finds that there are insufficient changed circumstances warranting a reconsideration related to the *AD Final Determination*. As described above, Commerce determined that a PMS existed in Argentina with regard to the price of soybeans as a constituent element of the COP of biodiesel in Argentina.⁴² The Trade Preferences Extension Act of 2015⁴³ added language to section 773(e) of the Act, which states that “if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.”

In this context, we determined that the GOA’s intervention in soybean pricing through the export tax of 30 percent on soybeans rendered the domestic price of soybeans paid by respondent biodiesel producers outside the ordinary course of trade.⁴⁴ This PMS finding involved: (1) numerous studies indicating that the export tax on soybeans was designed to generate a low-cost surplus of soybeans for domestic use, thereby artificially depressing soybean prices for domestic consumption; (2) the fact that the export tax on soybeans was not intended as an ordinary revenue measure, but rather was unique to soybeans, as soybeans were the only commodity subject to an export tax during the POI;

⁴² See *AD Preliminary Determination* PDM at 24.

⁴³ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

⁴⁴ See *AD Preliminary Determination* PDM at 23-24; see also *AD Final Determination* IDM at Comment 3.

and (3) record evidence that Argentine prices for soybeans were nearly 40 percent lower than world market prices for soybeans during the POI.⁴⁵ Accordingly, based on the totality of the circumstances, Commerce rejected the prices paid by the respondents in the AD investigation as part of the COP calculation, as they did “not accurately reflect the cost of production in the ordinary course of trade,” and replaced these prices with a market-determined price.⁴⁶

For purposes of this CCR, record evidence shows soybean prices in Argentina still remain well below world market prices. Specifically, according to the GOA’s data, since September 2018 (when the export tax on biodiesel was raised to 25.3 percent), the gap between domestic and world prices has ranged between \$50 per ton to nearly \$100 per ton, or, in terms of a percentage, domestic prices have been 30 percent lower than world prices since last September.⁴⁷ This is almost the same gap that existed during the POI.⁴⁸

While the GOA speculates that the relationship between domestic and world prices is the result of several factors, such as currency fluctuations, trade measures imposed by China on U.S. soybean shipments, and the weather, it provided no studies, publications, or detailed analyses demonstrating whether such factors might explain the current gap between prices.⁴⁹ Instead, the GOA argues that it is impossible to isolate the effects of any one cause. However, evidence on the record demonstrates that there is a discernible correlation between the size of the so-called price gap and the amount of the export tax.

⁴⁵ See *AD Preliminary Determination* PDM at 23-24; see also *AD Final Determination* IDM at Comment 3.

⁴⁶ See *AD Preliminary Determination* PDM at 23-24; see also *AD Final Determination* IDM at Comment 3.

⁴⁷ See GOA IQR at 14.

⁴⁸ See *AD Final Determination* IDM at Comment 3; see also Petitioner’s Letter, “Petitioner’s Particular Market Situation Allegation Regarding Respondent’s Home and Third Country Market Sales and Cost of Production,” dated August 2, 2017 (placed on the record of these segments by Additional Information Memo) at 45 and Exhibit 37-B.

⁴⁹ See GOA IQR at 11-12. The GOA states that it “doubts” the export tax has had a significant effect on prices.

For instance, from 1994 through 2001 (when the export tax rate was 3.5 percent), domestic soybean prices in Argentina were slightly less than the world soybean price.⁵⁰ In 2001, the difference in prices was \$26 per metric ton.⁵¹ By the end of 2002, after the export tax increased to 23.5 percent, the difference between Argentine domestic soybean prices and world market prices had grown to nearly \$50 a metric ton.⁵² Between 2003 and 2006, the average price differential increased to over \$100 per metric ton.⁵³ In 2007, when the GOA increased the export tax from 23.5 percent to 35 percent, the price differential increased to \$165 per metric ton.⁵⁴ The price differential increased to \$200 per metric ton in 2015.⁵⁵ In 2016, after the GOA reduced the export tax to 30 percent, the price differential decreased to \$146 per metric ton. More recently, as the GOA began reducing the export tax by 0.50 percent per month in January 2018, the gap began closing.⁵⁶ After the GOA increased the export tax to 28.3 percent in September 2018, the gap began expanding once again, approaching \$100 per metric ton in January 2019. In any event, as we indicated in the *AD Final Determination* in response to a similar argument by the Vicentin Group, the PMS provisions of the Act do not require a strict causal finding between the distortive government action and the observed distorted price.⁵⁷

In addition, as noted, multiple publications on the record of the AD investigation concluded that the export tax leads to lower soybean prices (and was intended to do so).⁵⁸

⁵⁰ See CVD Petition at 26 (placed on the record of these segments by Additional Information Memo).

⁵¹ *Id.* at CVD-ARG-21 (placed on the record of these segments by Additional Information Memo).

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ See GOA IQR at 13 (comparison of Argentine prices with Chicago commodities exchange prices) and 4 (Table 1: Export Tax Rates).

⁵⁷ See *AD Final Determination* IDM at Comment 3.

⁵⁸ See *AD Preliminary Determination* PDM at 23-24; see also *AD Final Determination* IDM at Comment 3.

The GOA has provided no evidence in the form of studies, publications, or detailed analyses to undermine these publications, or to demonstrate that the export tax on soybeans no longer impedes external trade and competitive domestic pricing for soybeans.

We recognize that the record indicates that the design and structure of the export tax regime has changed, which affects the “ordinary revenue measure” prong of our PMS analysis in the AD investigation. Specifically, in the *AD Final Determination*, we found that the export tax regime was not part of an ordinary revenue measure, as it was unique to soybeans – the only commodity product subject to an export tax during the POI.⁵⁹ The record of this CCR demonstrates that is no longer the case. As discussed above, Decree 1025/2017 and Decree 468/2018 increased the export tax on biodiesel from zero to 15 percent, while Decree 793/2018, in addition to decreasing the export tax on soybeans, imposed new, temporary taxes on all products exported from Argentina.⁶⁰ Thus, we find that the export tax is no longer designed for downstream development purposes, but is part of an overall revenue improvement measure and a tax scheme applied to exports of both agricultural and industrial commodities.

Nevertheless, after reviewing the record evidence in this CCR under the totality of circumstances analysis of the AD investigation, we find that there remains a price gap that still exists between domestic and world prices, as a result of the export tax on soybeans, which continues to impede external trade and competitive domestic pricing for soybeans. Thus, we find that there are insufficient changed circumstances to warrant a reconsideration of our finding that the GOA’s intervention in soybean pricing through the export tax on soybeans renders prices paid by biodiesel producers outside the ordinary course of trade.

⁵⁹ See *AD Final Determination* IDM at Comment 3.

⁶⁰ See GOA IQR at 3-4, Appendix V; see also Requests for CCRs at Attachments 2 and 3.

The internal soybean market is still clearly distorted by GOA intervention and therefore a PMS still exists.

We also find that our PMS analysis is unaffected by the imposition of a specific export tax on biodiesel. As noted above, during the POI there was an export tax on biodiesel of 3.96 percent through May 2016 and 5.04 percent from June 2016 until the end of the POI in December 2016.⁶¹ After dropping down to zero, the export tax is now 25.3 percent, as compared to the soybean export tax of 28.3 percent. We find that an export tax on soybeans continues to artificially depress soybean prices for domestic consumption, regardless of the presence or magnitude of an export tax on biodiesel. Simply put, Argentine soybean growers continue to accept depressed domestic prices rather than exporting and paying a significant export tax.

CVD Analysis

In the CVD investigation, Commerce examined an allegation that soybeans were provided for LTAR through soybean export restraints, which the CVD Petition described as “high export taxes and other regulations relating to soybeans,”⁶² which entrust and direct soybean growers to provide a subsidy “benefiting the industry under investigation.”⁶³ In the *CVD Preliminary Determination*, Commerce determined that the export tax on soybeans amounted to a countervailable subsidy because, among other reasons,⁶⁴ the GOA “entrusted or directed” a private entity (*i.e.*, soybean growers) to make a financial contribution, pursuant to section 771(5)(B)(iii) of the Act, in the form of the provision of

⁶¹ See CVD Petition at Exhibit CVD-ARG-05 (placed on the record of these segments by Additional Information Memo).

⁶² *Id.* at 16 (placed on the record of these segments by Additional Information Memo).

⁶³ *Id.* at 17 (placed on the record of these segments by Additional Information Memo).

⁶⁴ Commerce also found that the provision of soybeans was specific and provided a benefit.

goods or services to biodiesel producers for LTAR, pursuant to sections 771(5)(D)(iii) and 771(5)(E)(iv) of the Act.⁶⁵ We explained that where, as was the case in the underlying investigation and is still the case here, there is no “direct legislation to entrust or direct private parties to provide a financial contribution,” Commerce may “rely on circumstantial information to determine that there was entrustment or direction.”⁶⁶ We further explained that, in such a situation, Commerce employs a two-part test examining the relevant policy and practices of the foreign government.⁶⁷ Specifically, Commerce looks to: (1) whether the government has in place during the relevant period a governmental policy *to support the respondent(s)*; and (2) whether evidence on the record establishes a pattern of practices on the part of the government to act upon that policy to entrust or direct the associated private entity decisions.⁶⁸ We then evaluated the record and determined that the export tax on soybeans constituted “a policy to support production of biodiesel and other domestic processing industries,”⁶⁹ and that “{t}he effect on soybean prices paid by the respondent is not incidental to, but a direct result of, a system designed by the GOA to ensure the availability of relatively low-priced soybeans for domestic processing industries, notably the biodiesel industry.”⁷⁰ In other words, Commerce concluded the program existed to “provide{ } an incentive for the development of domestic manufacturing or processing industries with higher value-added exports,”⁷¹ such as biodiesel production. This

⁶⁵ See *CVD Preliminary Determination* PDM at 30.

⁶⁶ *Id.* at 28 (citing *Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) and accompanying IDM at 125).

⁶⁷ See *CVD Preliminary Determination* PDM at 28. The CIT affirmed Commerce’s approach in *Hynix Semiconductor, Inc. v. United States*, 391 F. Supp. 2d 1337 (CIT 2005), *aff’d after remand* 425 F. Supp. 2d 1287 (CIT 2006).

⁶⁸ See *CVD Preliminary Determination* PDM at 28.

⁶⁹ *Id.* at 29.

⁷⁰ *Id.*

⁷¹ *Id.*

conclusion was derived from an examination of the “pertinent GOA laws and regulations” as well as other, third-party evidence indicating the program was a “development tool” designed “to help” downstream producers.⁷² Thus, the focus is not on whether the program has led to lower input prices, but whether the program is designed and structured to entrust and direct soybean producers to provide Argentine biodiesel producers with soybeans for LTAR.⁷³

We preliminarily determine that the evidence that supported a finding of entrustment and direction in the original investigation no longer exists. Based on the record before us, we no longer find that Argentina’s export tax regime is designed and structured to encourage the development of the downstream biodiesel industry or to benefit the respondents. This is based on the changes cited by the GOA to the export tax on soybeans as well as to the export taxes on downstream products (including biodiesel) for which soybeans are a major input.⁷⁴ Contrary to the petitioner’s contention that the export tax on biodiesel is irrelevant to both the AD and CVD CCRs, Commerce preliminarily concludes that the analytical framework for finding “entrustment and direction” of private parties (as described above), which is concerned with more than the existence of distorted prices, and the record of the CVD investigation itself, indicate that we should consider the export tax on biodiesel in relation to the export tax on soybeans.⁷⁵ As discussed above, the

⁷² *Id.*

⁷³ In the CVD Initiation Checklist, we noted that the “Biofuels Law” is intended to “*promote* and control sustainable biofuel production and use.” See CVD Initiation Checklist at 8-9 (emphasis in the original) (placed on the record of these segments by Additional Information Memo); see also Petition at CVD-ARG-27 (“Regime to Regulate and Promote Sustainable Biofuel Product and Use,” Law 26,093 (April 19, 2006) (placed on the record of these segments by Additional Information Memo).

⁷⁴ See CVD Initiation Checklist at 7.

⁷⁵ By comparison, in the PMS analysis undertaken in the AD investigation, as discussed above, we are concerned simply with whether the GOA’s intervention has led to distorted prices that are outside the ordinary course of trade.

CVD Petition describes the allegation as being based on the export tax on soybeans and other regulations relating to soybeans, and also repeatedly refers to the importance of the difference between the level of export taxation on soybeans compared to downstream products such as biodiesel.⁷⁶ This same approach, examining the totality of record information and the unique circumstances of the case, was taken in the CVD Initiation Checklist, where Commerce concluded:

The overall configuration of the GOA's export taxes, *including the differences between export taxes on soybeans and soybean derivatives*, in addition to the intent of the biofuels law to promote the production of and use of biofuels, and to benefit "all projects for the establishment of biofuel industries," indicates that the GOA has implemented the export taxes with the intent of entrusting and directing soybean suppliers to provide a financial contribution to biodiesel producers.⁷⁷

The significance of the relationship between the two taxes is apparent elsewhere on the record of the investigation, including the third-party assessments submitted by the petitioner to support the allegation and examined by Commerce during the investigation.⁷⁸

For example, at the outset of our analysis of the program in the *CVD Preliminary Determination*, Commerce highlights three third-party sources. Each source references the differential as being important if the design of the scheme is to benefit downstream producers:

- International Renewable Energy Agency, "Renewable Energy Policy Brief – Argentina," dated June 2015: "***Differential export taxes*** for biofuels versus other products derived from the same feedstock promoted the export of biofuels, especially biodiesel. For example, in 2008 export taxes were 35% for soy bean, 32% for soy oil, but only 5% for biodiesel."⁷⁹
- USDA Foreign Agricultural Service, "Argentina Biofuels Annual," dated July 7, 2016: "A factor which contributed to the expansion of the local biodiesel industry

⁷⁶ See CVD Petition at 19-23 (placed on the record of these segments by Additional Information Memo).

⁷⁷ See CVD Initiation Checklist at 9 (emphasis added).

⁷⁸ See *CVD Preliminary Determination* PDM at 25-26.

⁷⁹ See CVD Petition at Exhibit CVD-ARG-03.

since its beginnings has been the *differential export tax on biodiesel vis-a-vis soybean oil*. Soybean oil exports are currently taxed 27 percent while biodiesel exports are taxed 5.04 percent.”⁸⁰

- OECD Trade Policy Studies, “The Economic Impact of Export Restrictions on Raw Materials,” dated 2010: “Export restrictions provide downstream processing industries with an advantage. *Differential export duty rates* play an important role in this regard: higher rates for raw materials or input products while lower rates apply for finished products. For example, in Argentina the export duty rates for soybean, soybean oil and biodiesel were 27.5%, 24.5%, and 5% respectively as of 2007. The price advantage provided to domestic downstream industries can distort and reduce competition in both domestic and foreign markets.”⁸¹

Thus, we preliminarily determine that the convergence of the export tax rates on soybeans and biodiesel demonstrates that the tax regime as it pertains to soybeans and its derivatives is no longer about benefitting or encouraging the development of the domestic biodiesel industry. The shift in the design is also evident from the economic reform proposal Argentina has submitted to the IMF, corroborating the GOA’s claims that it has shifted the focus of its export tax program from selective economic development to general revenue collection and economic stability. In relevant part, the proposal, dated October 17, 2018, states:

- New and increased export taxes are one of two fiscal measures adopted by Argentina as a means of fairly achieving revenue gains and the macroeconomic and financial objectives promised to the IMF (the other being a wealth tax).⁸²
- The GOA has “unraveled a myriad of economic distortions put in place by the previous administration,”⁸³ and pledges to continue “revisions to the current distortive systems of taxes and subsidies.”⁸⁴
- The commitments are part of a request to the IMF for access to an additional \$7.1 billion in reserve financing, and a recognition that Argentina must “no longer live beyond its means” and must “spend only what it can raise in taxes.”⁸⁵

⁸⁰ *Id.* at Exhibit CVD-ARG-05.

⁸¹ *Id.* at Exhibit CVD-ARG-07 (emphasis added).

⁸² IMF Proposal at 2.

⁸³ *Id.* at 4.

⁸⁴ *Id.* at 6.

The OECD report referenced above also states that in Argentina export taxes have historically been an important source of revenue, unlike in other countries where they have been used primarily as a development tool, thus supporting Argentina's characterization of the revised tax regime.

Given this change, Commerce preliminarily determines that the current program provides no third-party financial contribution through an entrustment and direction mechanism and is therefore, as currently designed, not countervailable. Therefore, Commerce preliminarily determines to lower the CVD cash deposit rates by the amount determined for the program in the CVD final determination.

Preliminary Results of Changed Circumstances Reviews

Pursuant to section 751(b) of the Act and 19 CFR 351.216, Commerce preliminarily determines that changed circumstances do not exist warranting any changes under the AD order, but that changed circumstances do exist warranting recalculation of the total CVD cash deposit rates as follows:

	Total Subsidy Rate Under the CVD Order	Subsidy Rate Determined for the Provision of Soybeans	Revised Total Subsidy Rate Pursuant to the CCR
LDC Argentina S.A.	72.28%	72.09%	0.19%
Vicentin S.A.I.C.	71.45%	61.15%	10.30%
All Others [*]	71.87%	n/a	10.30%

* Because the revised cash deposit rate determined for LDC Argentina S.A. is *de minimis*, we have based the all others rate exclusively on the rate for Vicentin S.A.I.C.

⁸⁵ *Id.* at 4.

Cash Deposits

If the revised cash deposit rates indicated above are maintained for the final results of the CVD CCR, Commerce will issue instructions to U.S. Customs and Border Protection (CBP) revising the cash deposits applied to all entries of subject merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of the final results in the *Federal Register*. Commerce will instruct CBP not to collect cash deposits for producers or exporters determined to have a total subsidy rate below *de minimis*. Commerce will instruct CBP to continue to suspend all entries of subject merchandise regardless of whether any rate determined pursuant to the final results of these CCRs is zero or *de minimis*, and such entries will be subject to administrative review if one is requested.

If the above preliminary results are maintained for the final results of the AD CCR, Commerce will not issue instructions to CBP under the AD order as no changes to the cash deposit rates need to be effectuated.

Public Comment

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review in the *Federal Register*.⁸⁶ Rebuttal briefs, limited to issues raised in the case briefs, may be filed by no later than five days after the deadline for filing case briefs.⁸⁷ Parties that submit case or rebuttal briefs are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.⁸⁸ All briefs are to be filed electronically using

⁸⁶ See 19 CFR 351.309(c)(1)(ii).

⁸⁷ See 19 CFR 351.309(d)(1).

⁸⁸ See 19 CFR 351.309(c)(2) and (d)(2).

ACCESS.⁸⁹ An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day on which it is due.⁹⁰

Any interested party may submit a request for a hearing to the Assistant Secretary of Enforcement and Compliance using ACCESS within 30 days of publication of this notice in the *Federal Register*.⁹¹ Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.⁹² If a request for a hearing is made, parties will be notified of the time and date of the hearing, which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.⁹³

Final Results of the Review

Unless extended, in accordance with 19 CFR 351.216, Commerce intends to issue the final results of this CCR not later than 270 days after the date on which the review was initiated.

Notification to Interested Parties

Commerce is issuing these results in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216 and 351.221(c)(3)(i).

Dated: July 1, 2019.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

⁸⁹ See 19 CFR 351.309(b) and (f).

⁹⁰ See 19 CFR 351.303(b).

⁹¹ See 19 CFR 351.310(c).

⁹² *Id.*

⁹³ See 19 CFR 351.310(d).

